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10 Attorneys for Plaintiffs

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN JOSE DIVISION**

14 VIVIAN FIORI ARIZA and ROGGIE
15 TRUJILLO, on behalf of themselves and
all others similarly situated,

16 Plaintiffs,

17 vs.

18 DELL INC., a corporation; BANCTEC,
19 INC., a corporation; WORLDWIDE
20 TECHSERVICES, LLC, an entity; DELL
CATALOG SALES, L.P., an entity; DELL
21 PRODUCTS, L.P., an entity; DELL
MARKETING L.P., an entity; DELL
22 MARKETING L.P., LLC, an entity; DELL
MARKETING G.P., LLC, an entity; DELL
23 USA, L.P., an entity; and DOES 1 Through
24 10,

25 Defendants.

Case No. 09 CV 01518 JW

**STIPULATION TO PERMIT PLAINTIFFS
TO FILE CONDITIONAL THIRD
AMENDED COMPLAINT; [PROPOSED]
ORDER**

CLASS ACTION

Assigned to the Honorable James Ware, Courtroom
8

Action filed on April 7, 2009

1 **WHEREAS**, Plaintiffs Vivian Fiori Ariza and Roggie Trujillo (“Plaintiffs”), on the one
 2 hand, and Defendants Dell Inc., Dell Catalog Sales, L.P., Dell Products, L.P., Dell Marketing
 3 L.P., Dell Marketing L.P., LLC, Dell Marketing G.P., LLC, Dell USA L.P. (collectively, “Dell”
 4 or “Dell Defendants”); Defendant BancTec, Inc. (“BancTec”); and Defendant Worldwide
 5 TechServices, LLC, f/k/a QualxServ, LLC (“Worldwide”) (collectively, “Defendants”), on the
 6 other hand, have reached a proposed settlement and compromise of the disputes between them
 7 and other similarly situated individuals in the Action, which is embodied in the Settlement
 8 Agreement filed with the Court;

9 **WHEREAS**, on November 8, 2007, Plaintiffs’ counsel filed a putative class action on
 10 behalf of Pamela Newport against Defendants in Arizona Superior Court, Pima County, styled
 11 *Newport v. Dell Inc. et al.*, Case No. C20076533, which action was subsequently removed by
 12 Dell to the United States District Court for the District of Arizona on February 1, 2008, thereby
 13 commencing the federal case styled *Newport v. Dell Inc. et al.*, No. 4:08-CV-0096-CKJ;

14 **WHEREAS**, Plaintiffs’ counsel and Defendants’ counsel mediated Plaintiffs’ and Ms.
 15 Newport’s claims with Antonio Piazza on July 12, 2010 in an all-day mediation, and participated
 16 in additional mediation conferences that were held telephonically with Mr. Piazza on October 6
 17 and 11, 2010;

18 **WHEREAS**, the parties reached an agreement to settle all the claims of Plaintiffs and Ms.
 19 Newport and their respective cases against all of the Defendants;

20 **WHEREAS**, on April 23, 2010, the *Newport* court stayed the case on the parties’ joint
 21 stipulation;

1 WHEREAS, on July 29, 2004, Pamela F. Alvarez, through Plaintiffs' counsel, filed a
2 putative class action in the Superior Court of the State of California, County of Mendocino, styled
3 as *Alvarez v. Dell Inc.*, Case No. SCUK CVG 0492921;

4 WHEREAS, Robert Dean and Raul Reyes are currently named as the putative class
5 representatives in the *Alvarez* action;

6 WHEREAS, Plaintiffs' counsel and Dell Defendants' counsel mediated the *Alvarez* action
7 with Justice Edward A. Panelli on September 28, 2010 in an all-day mediation, and the parties
8 reached a proposed settlement that resolved in principle all the claims asserted in the *Alvarez*
9 action as well as the "next business day" claims of Arizona residents;

10 WHEREAS, the parties have thus reached a global class action settlement of these three
11 cases, to be presented to this Court for approval;

12 WHEREAS, pursuant to the Settlement Agreement being filed with the Court
13 concurrently with this stipulation, Plaintiffs Ariza and Trujillo seek leave to conditionally amend
14 the pleadings to add Ms. Newport and Messrs. Dean and Reyes as representative plaintiffs, to
15 encompass all claims asserted in the *Newport* and *Alvarez* actions at any time (including
16 amending the proposed class definition to include the residents of California and Arizona), and to
17 amend the proposed class definition to include the residents of Arizona who fit the settlement
18 class definition in this Action;

19 WHEREAS, Plaintiffs are lodging their proposed Conditional Third Amended Complaint
20 with the Court concurrently with this stipulation;

21 WHEREAS, the Parties agree that Defendants' time to respond to the Conditional Third
22 Amended Complaint shall be stayed;

WHEREAS, no prejudice will result from the leave requested herein; and

WHEREAS, good cause exists for granting leave to amend in order to effect a global settlement of this action, the *Newport* action, and the *Alvarez* action.

NOW, THEREFORE, the parties hereby stipulate, subject to Court approval, to permit Plaintiffs to conditionally file the Third Amended Complaint. If the proposed settlement is not finally approved or if the settlement does not occur for any reason, this Order shall become null and void and the parties will revert to their respective positions prior to settlement, and the parties in this action (i.e., Plaintiffs Vivian Fiori and Roggie Trujillo and Defendants Dell, BancTec and Worldwide), the *Newport* action (i.e., Plaintiff Pamela Newport and Defendants Dell and BancTec), and the *Alvarez* action (i.e., Plaintiffs Robert Dean and Raul Reyes and the Dell Defendants) shall have all claims and defenses that they had or were asserting as of the date of the mediations at which the parties agreed to settle each action.

IT IS SO STIPULATED.

DATED: November 8, 2010

Respectfully Submitted,
STRANGE & CARPENTER

By: /s/ Gretchen Carpenter
Brian R. Strange
Gretchen Carpenter
Attorneys for Plaintiffs

DATED: November 8, 2010

REEVES & BRIGHTWELL, LLP

By: /s/ Paul Schlaud
Paul Schlaud
Attorneys for Dell Defendant

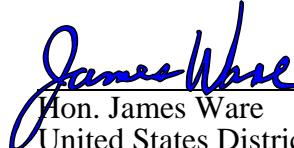
DATED: November 8, 2010

ROBERTS RASPE & BLANTON, LLP

By: /s/ Michael Blanton
Michael Blanton
Attorneys for Defendants Banctec, Inc. and
Worldwide TechServices, LLC

1 PURSUANT TO STIPULATION THE ABOVE-REFERENCED LEAVE TO AMEND
2 GRANTED. IS SO ORDERED:

3 DATED: November 12, 2010


4 Hon. James Ware
United States District Court Judge

5

6 **FILER'S ATTESTATION**

7 Pursuant to General Order No. 45, Section X(B) regarding signatures, I, Gretchen
8 Carpenter, attest that concurrence in the filing of this document has been obtained from Paul
9 Schlaud and Michael Blanton.

10

11 By: /s/ Gretchen Carpenter
Gretchen Carpenter